

REMARKS

For the Examiner's convenience and reference, Applicants' remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants' understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

STATUS OF THE CLAIMS

Claims 1-30 are currently pending in the case. Claims 1-30 stand rejected. In this Response, Applicants have amended claims 1, 6, 7, 20, 29, and 30. No new claims have been added. No new matter has been added.

RESPONSE TO CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Pub. No. 2004/0044997 to Talati (hereinafter "Talati") in view of U.S. Patent No. 6,986,132 to Schwabe (hereinafter "Schwabe").

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to

combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 706.02(j).

Applicants submit that the newly amended claims are not obvious in view of Talati and Schwabe because neither reference, alone or in combination, discloses each of the limitations recited in the claims. For example, referring to claim 1, neither reference teaches a “*bootstrap module, within the new code image, configured to selectively reconcile incompatibilities between the old code image and the new code image.*” This is a significant distinction between Applicants’ claimed invention and the references cited by the Examiner. The importance of this distinction is originally discussed in paragraphs 8 and 9 of Applicants’ background section, which states:

Unfortunately, conventional code overlay operations do not allow for handling of these incompatibilities between the old code image and the new code image. In order for a conventional code overlay to handle such incompatibilities, the bootstrap code of the old code image would need to be coded to anticipate and reconcile the incompatibilities and differences. Such incompatibilities are unknown at the time the instructions of the bootstrap code are written and stored in the old code image.

. . . In addition, the apparatus, system, and method should preserve an environment associated with the old code image *to facilitate reconciliation of incompatibilities by a bootstrap portion of the new code image.* (emphasis added).

The importance of this distinction is further described in paragraph 55 of Applicants’ specification, which states:

In conventional code image updates, bootstrap code of the old code image 206 is executed. In the present invention, the branch module 406 causes the CPU 202 to *begin executing instructions located within the bootstrap module 408 of the new code image 208.* (emphasis added).

Thus, by executing a bootstrap module of the new code image, rather than or in addition to bootstrap code of the old code image, the claimed invention is able to reconcile

incompatibilities that would not otherwise be possible by simply executing bootstrap code of the old code image.

Although the Examiner asserts that Schwabe discloses “a conversion module configured to selectively reconcile incompatibilities between the old code image and the new code image” (pg. 3 of Office Action), Applicants can find no reference in either Talati or Schwabe of a *bootstrap module within the new code image* which is configured to reconcile incompatibilities between the old code image and the new code image. Because neither reference discloses these limitations, Applicants request that the Examiner withdraw the rejections under section 103.

Applicants submit that independent claims 10, 13, 20, 29, and 30 are allowable over the art of record for at least the reasons provide above with respect to claim 1. Furthermore, dependent claims 2-9, 11, 12, 14-19, and 21-28 are allowable at least due to their direct or indirect dependency from independent claims 1, 10, 13, and 20.

CONCLUSION

Applicants submit that the amendments to claims 1-30 overcome the Examiner's rejections and put the claims in condition for allowance. In the event the Examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the Examiner is respectfully urged to initiate the same with the undersigned.

Respectfully submitted,

/Brian C. Kunzler/

Brian C. Kunzler

Reg. No. 38,527

Attorney for Applicants

Date: August 8, 2007

Kunzler & McKenzie

8 East Broadway, Suite 600

Salt Lake City, UT 84111

Telephone (801) 994-4646

Fax (801) 531-1929